IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS MARSHALL DIVISION

TYRONE EDWARD GOTT §
v. \$ CIVIL ACTION NO. 2:11cv500
DIRECTOR, TDCJ-CID \$

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND ENTERING FINAL JUDGMENT

The Petitioner Tyrone Gott, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Gott pleaded guilty to indecency with a child - sexual contact on January 31, 2011, receiving a sentence of eight years in prison. In his federal habeas corpus petition, he alleged that he was mentally unstable, the prosecutor threatened to stack state jail charges if Gott did not accept the plea agreement, and he received ineffective assistance of counsel. The Respondent filed an answer to Gott's petition, to which Gott did not file a reply.

After review of the pleadings and the state court records, the Magistrate Judge issued a Report recommending that the petition be denied. Gott did not file objections; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Respondent filed objections to the Report, agreeing with the conclusion but contending

the Magistrate Judge failed to find that Gott's first ground for relief was unexhausted and

procedurally barred to the extent that it is not interpreted as an ineffective assistance of counsel

claim. In discussing Gott's first ground for relief, the Magistrate Judge set out those claims which

Gott raised in his state habeas petition which paralleled those in his federal petition. The Magistrate

Judge did not err by addressing these claims on the merits. See also 28 U.S.C. §2254(b)(2) (stating

that an application for the writ of habeas corpus may be denied on the merits notwithstanding th

applicant's failure to exhaust state remedies). The Respondent's objections provide no basis upon

which to set aside the Report of the Magistrate Judge.

The Court has conducted a careful de novo review of those portions of the Magistrate

Judge's proposed findings and recommendations to which the Respondent objected. See 28 U.S.C.

§636(b)(1) (district judge shall "make a de novo determination of those portions of the report or

specified proposed findings or recommendations to which objection is made.") Upon such de novo

review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 15) is **ADOPTED** as the

opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is hereby

DISMISSED WITH PREJUDICE. It is further

ORDERED that the Petitioner Tyrone Gott is **DENIED** a certificate of appealability *sua*

sponte. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby

DENIED.

SIGNED this 31st day of March, 2015.

ROBERT W. SCHROEDER III

UNITED STATES DISTRICT JUDGE

Robert W Filmoeden

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